



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, वीरवार, ८ फरवरी, १९६८/१९ मार्च, १९८९

GOVERNMENT OF HIMACHAL PRADESH

LABOUR DEPARTMENT

NOTIFICATION

Simla-1, the 5th February, 1968

No. 1-47/66-(LAB)/IND.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Lieutenant Governor (Administrator), Himachal Pradesh is pleased to publish the following award of the Presiding Officer, Labour Court, Himachal Pradesh, Simla in respect of the dispute between the Workmen and the management of Municipal Committee, Simla.

P. K. MATTOO,
Secretary.

**BEFORE SHRI RAJENDRA NATH AGGARWAL PRESIDING
OFFICER, LABOUR COURT, SIMLA**

CIVIL REFERENCE No. 4-M/2 OF 1967

Workmen of the Municipal Committee, Simla.

Versus

The Management of the Municipal Committee, Simla.

AWARD

The Governor of Punjab, vide Notification, dated 14th April, 1966, referred the following dispute to the Labour Court, Jullundur, under clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

“Whether the action of the Municipality in not allowing duty to

Mrs. I. Nath, Nurse, from August, 1964 onwards and the decision of the Committee to terminate her services is justified and in order? If not, whether she is entitled to any wages from August, 1964 to the date of resumption to her duties and other compensation, if any? If so, with what details."

2. On the re-organisation of the Punjab, the Lieutenant Governor of Himachal Pradesh, under sub-section (2) of section 7 of the Industrial Disputes Act, 1947 appointed Shri Rajendra Nath Aggarwal, District and Sessions Judge, Mahasu and Kinnaur districts, Simla, as Presiding Officer of the Labour Court. Reference No. 53 of 1966, between the Workmen and Management of Municipal Committee, Simla, was referred to this Labour Court, for adjudication.

3. The relevant facts for the decision of this reference are, that Mrs. I. Nath, hereinafter referred to as the Workman, was appointed as nurse in the Isolation Hospital, Simla, on the 7th November, 1962, on a probation of one year. The Isolation Hospital is under the control of the Municipal Committee, Simla. On 15th January, 1965, a charge-sheet was served on the Workman. The main allegations contained in the charge sheet against the Workman were, that from 20th November, 1964 to 2nd December, 1964, she did not attend to her duty properly and she absented herself from duty without prior written permission of the competent authority and that her behaviour was arrogant and full of insubordination. The charge further against the Workman was that there were shortages in the stock, of which she was Incharge, of the value of Rs. 167.01 Paise. There were a number of other charges against the Workman and these are contained in Ex. M.I. The Workman did not participate in the enquiry and on 23rd February, 1965, the enquiry officer, who was in this case, the Medical Officer of Health, Simla, recorded ex-parte evidence of the witnesses. The enquiry officer in his report Ex. M. 4, dated 31st March, 1965, found the Workman guilty of the charges, 1 to 15, except 10, 12 and 15, and recommended her termination of services. The concluding portion of the report of the enquiry officer, reads as:—

"In addition to this, I would recommend the termination of her services, as her services are of no use and her retention in present capacity is merely a burden on the Municipal Exchequer. Her behaviour and attitude is of incorrigible type as evidenced from the proceedings."

The Municipal Committee terminated the services of the Workman in December, 1965. The Municipal Employees Federation served upon the Municipal Committee, a demand notice that Mrs. I. Nath had not been paid her salary from August, 1964 and that her salary had been withheld illegally without assigning any reason, and that she should be paid all her wages. The Governor of Punjab was of the opinion that an industrial dispute exists between the Workmen and the Management of the Municipal Committee, Simla and accordingly made the reference to the Labour Court for the adjudication of the dispute.

4. The case of the Workman is that she regularly attended the hospital and performed her duties regularly. The Workman further stated that her behaviour was never insolent and she never refused to obey an order. The Workman stated that she was not given any charge of any medicine or stocks and she did not embezzle any property of the hospital. The Workman stated that she was charge-sheeted on 15th January, 1965 but she was not informed of the proceedings and, therefore, could not participate, and she had never refused to accept any letter sent to her under registered cover. The Workman

maintained that the ex-parte proceedings were illegal and wrongly taken against her. The Workman stated that the enquiry held against her was against the rules of natural justice and equity. The Workman maintained that the action of the Committee in dismissing her from the service was illegal and she was entitled to full pay and allowances and compensation for the whole period. The Workman claimed a sum of Rs. 9,294.22 Paise as compensation for wrongful dismissal.

5. The Municipal Committee in its written statement maintained that the order of reference with regard to the termination of service is without jurisdiction, illegal and void as the dispute about termination was never taken up by the Union, of which the Workman concerned was a member before the order of reference. The Municipal Committee submitted that the Workman was irregular in her attendance and she absented herself from duty without prior sanction and she did not obey the orders of the superiors and that the Workman had embezzled hospital property. The Municipal Committee further stated that the charge-sheet was issued to the Workman on 15th January, 1965, and she did not participate in the enquiry and ex-parte proceedings were held against her and the enquiry officer found the charges proved against the Workman. The Municipal Committee submitted that the Workman absented herself without permission after November, 1964 and she continued to absent herself till the end of March, 1965. The Municipal Committee submitted that in view of the continued absence of the Workman from 20th January, 1965, the Municipal Committee, vide its resolution, dated 21-4-1965, decided that the Workman should not be taken on duty. The Municipal Committee further stated that the Workman was appointed on probation for one year and while her case for confirmation was under consideration, the audit pointed out serious cases of misappropriation and embezzlement against the Workman during the course of her probation period and as such her confirmation was not ordered. The Municipal Committee submitted that a complete charge-sheet containing the allegations of misappropriation, including the absence from duty during November, 1964, was issued to the Workman, but she did not submit any explanation and an ex-parte enquiry was held by the Medical Officer of Health, Simla, who, in his findings, dated 31st March, 1965 found the charges of misappropriation and absence, proved against the Workman, and that the Municipal Committee agreed with the report of the enquiry officer and terminated the services of the Workman vide resolution No. 22, dated 1-12-1965. The Municipal Committee maintained that termination of services of Mrs. I. Nath, in the circumstances of the case, is justified and in order. The Municipal Committee stated that the Workman was not entitled to any wages and compensation.

6. On the pleadings of the parties, the following issues were framed by the Presiding Officer:—

- (1) Whether the order of reference is without jurisdiction, illegal and void with respect to the termination of service of Mrs. I. Nath, concerned Workman, and what is its effect?
- (2) Whether Mrs. I. Nath, concerned Workman, was not allowed duty from August, 1964 onwards? If so, upto what date?
- (3) Whether the termination of services of Mrs. I. Nath, concerned Workman, is justified and in order?
- (4) To what relief/wages/compensation Mrs. I. Nath, concerned Workman, is entitled?

7. The Municipal Committee, in support of its case, examined M.W. 1 Dr. R. D. Arora, Medical Officer, M.W. 2 Dr. P. C. Gupta, Medical Officer, M.W. 3 Shri Sita Ram, Assistant, Incharge office, Heath Department, M.W. 4 Dr. R. P. Atreya, M.W. 5 Dr. D. S. Chauhan, Deputy Medical Superintendent, Ripon Hospital.

The Workman only examined Shonkia Ram in support of her case.

8. On the reference made the first question that arises for determination is, whether the termination of the service of the Workman was legal and justified. Ex. M. 1 is the charge-sheet which was served on the Workman. It contains fifteen charges against the Workman. The Workman did not send reply to the charges made against her. On 19th February, 1965, the Medical Officer of Health, Simla, sent a letter to the Workman intimating her that the ex-parte enquiry proceedings will be held on 23rd February, 1965, at 2 P.M. and in case she wanted to participate in the enquiry, she could do so. The Workman did not participate in the proceedings held on 23rd February, 1965. The enquiry officer, recorded the evidence of the witnesses and made the report Ex. M. 4 to the Municipality. The enquiry officer found charges 1 to 15, except charges 11, 12 and 15, proved against the Workman. The Municipal Committee, vide its resolution No. 22, dated 1-12-1965, agreed with the report of the enquiry officer and terminated the services of the Workman.

9. On behalf of the Workman, Shri Durga Singh Rathore, contended, that the order of dismissal of the Workman was illegal and malafide. Shri Rathore contended that Dr. Gupta, Incharge of the Isolation Hospital, was on inimical terms with the Workman and the attendance register was in his custody and he made false reports against the Workman of her absence from duty. I have very carefully perused the record and in my view, there is no force in the contentions of Shri Rathore. The Medical Officer of Health issued an order (M. 5), dated 19th August, 1964, detailing the duty hours of the staff nurse at the Infectious Diseases Hospital (Isolation Hospital). The Workman in her letter, dated 31-8-1964 (M. 7) expressed her inability to carry on the timings of duty mentioned in the order (M. 5). The President did not pass any order on the reply of the Workman as her transfer to Ripon Hospital was being considered. The Workman was transferred to Ripon Hospital and she was asked to report to the Matron for duty. The Workman reported for duty at Ripon Hospital on the forenoon of 7th September, 1964. The Superintendent, Ripon Hospital, found the Workman not a suitable person to work in the Ripon Hospital. Doctor J. C. Sarkaria, in his letter Ex. M. 56, to the Secretary, Municipal Committee, wrote the following:—

“In this respect this is to inform you that she reported for duty on 7-9-1964 forenoon but on very first day it has been observed that she is not a fit person to be retained in this hospital. On 7-9-1964 she reported for duty at 9 A.M. and to-day she has come at 10 A.M. Even it has been observed that she has not been co-operating in Hospital work at all, and is not properly working. She has informed that until she is provided accommodation in the Hospital she cannot attend her duties in time. This is not possible. As she has been found to be unwilling worker, I would recommend that she be sent back to I.D.H. to perform her duties as heretofore, immediately.”

The Workman worked at the Ripon Hospital on 7th and 8th September, and then she applied for some leave. Ex. M. 61 is the application of the Workman for the grant of leave from 9th September to 13th September. On the

back of the application M. 61 there is a note M. 61/A of the Superintendent, Ripon Hospital, which reads as:—

“M.C. Simla. She did not attend the Hospital at all on 9th September, 1964, and she was noticed loitering outside the Municipal Office. Her transfer case is already with you. This may kindly be disposed of along with that.”

It appears from M. 52 that the Workman applied for extension of leave from 14th September, 1964 to 20th September, 1964. There is not clear evidence on the record showing whether her leave application was sanctioned or not. The fact remains that the Workman remained on leave from 9th September, 1964 to 20th September, 1964. The Workman was sent back to the Isolation Hospital. Ex. M. 10 is the report of the Medical Officer of Health dated 23rd October, 1964, with regard to the attendance of the Workman for the period 1st October, 1964 to 11th October, 1964. The report Ex. M. 10 would show that on 4th October, 1964 and 11th October, 1964, the Workman did not attend the Hospital and on the rest of the days she did not attend to her duties according to the fixed working hours. Ex. M. 11 is the report of the Medical Officer of Health, Simla, complaining that the Workman was not attending to her duties at the Hospital according to the order, dated 29th August, 1964 and that her reply in explanations is impertinent and insolent. It appears from M. 12 that an enquiry was held in the complaint made by the Medical Officer of Health, but the Workman refused to participate in that enquiry. M. 14 is the report made by the Medical Officer, Incharge Isolation Hospital to the Medical Officer of Health with regard to the attendance of the Workman for the period 7th December, 1964 to 17th December, 1964. This report would show that the Workman did not attend to her duties according to the fixed duty hours. Ex. M. 15 is the report made by Dr. Gupta, Incharge, Isolation Hospital, to the Medical Officer of Health, Simla with regard to the attendance of the Workman from 18-12-1964 to 27-12-1964. This report would show that from 22nd December, 1964, to 25th December, 1964, the Workman was absent from duty and on the remaining days she was not attending the hospital according to the fixed duty hours. M. 16 to M. 50 are the reports made by the doctor, Incharge of the Isolation Hospital, Simla with regard to the attendance of the Workman for the period 1st January, 1965 to 28th March, 1965. It would be apparant from these reports that the Workman absented herself from duty completely on a number of days and on the days she reported for duty she did not work according to the fixed duty hours. The Municipal Committee, vide its Resolution, dated 21st April, 1965, decided that the Workman should not be taken on duty from 20th January, 1965. The services of the Workman were finally terminated on 1st December, 1965.

10. M.W. 2 Doctor Prem Chand Gupta stated that he was Medical Officer Incharge of Infectious Diseases Hospital from 1-3-1964 to 3-5-1965 and that the Workman worked there for some-time as a staff nurse. The witness stated that the Medical Officer of Health directed the Workman to work according to the duty list Ex. M. 5, but she did not perform the duties in accordance with the order M. 5. The witness further stated that he used to maintain the attendance register of the staff employed in the Hospital and the attendance of the Workman during the months of August and September, 1964 was irregular. The witness stated that from October, 1964 till January, 1965, the Workman was either absent or irregular in attendance in the hospital, and from February, 1965, onwards, she remained absent from duty. In cross examination Doctor Gupta stated that the timings noted by him in the reports were either based on his personal knowledge or on the

verification made by him from the Hospital staff who was on duty. To a Court question the witness stated that he had no enmity with Mrs. I. Nath. I have carefully perused the statement of Dr. Gupta and in my view there is nothing on the record to indicate that Doctor Gupta was making false reports against the Workman or that he was making wrong entries in the attendance register. There is nothing on the record to suggest that the Workman had attended the Hospital on the days she was marked absent by Dr. Gupta. In July, 1964, the Workman was temporarily posted in T.B. Clinic. M.W. 4 Doctor R. P. Atreya made the report Ex. M. 55, dated 28th July, 1964, to the Medical Officer of Health with regard to the conduct and behaviour of the Workman. Dr. Atreya stated that the Workman worked in T.B. Clinic from 26th February, 1964 to 28th July, 1964 and during her service in T.B. Clinic he found that the Workman used to absent herself from duty without permission. The witness stated that on 27th July, 1964, the Workman left the Clinic during duty hours while he was still attending on the patients. The witness stated that on the next day, that is 28th July, 1964, he explained to the Workman that the working hours of the Clinic were upto 3 P.M. and she should not leave the Clinic at 1 P.M. but the Workman refused to obey the orders.

11. From the record, it appears that from February, 1964, to February, 1965, the Workman worked at three different places and at all the places her work was not found to be satisfactory. There were reports against Workman by the different Doctors that she was not regularly attending to her duties. A consideration of the entire evidence on the record would show that the allegation of the Workman that Doctor Gupta was on inimical terms with her and he was making false notings in the attendance register is not correct. On the material placed on record, I would find that the order passed by the Municipal Committee, terminating the services of the Workman, is legal and justified.

12. Shri Rathore on behalf of the Workman contended that conciliation proceedings were pending when the order terminating the services was passed and in view of the provisions of section 33 of the Industrial Disputes Act, the order of the Municipal Committee, terminating the services of the Workman, is illegal. Relevant portion of section 33 reads as:—

“During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before (an arbitrator) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.....”.

There is no evidence on the record that any conciliation proceedings were pending when the order of the termination of the services was passed. In my view, the provisions of section 33 have no application to this case. The representative of the Municipal Committee contended that there was no industrial dispute within the meaning of section 2-K and, therefore, the reference was without jurisdiction. This argument appears to be without substance. Section 2-K reads as:—

“Industrial dispute” means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non employment or the terms of employment or with the conditions of labour, of any person”.

On 13th May, 1965, the Municipal Employees Federation served upon the Municipal Committee, Simla, a demand notice that Mrs. I. Nath had not been paid her salary from August, 1964 and her salary had been withheld illegally without assigning any reason to the claimant and that she should immediately paid all wages and the Doctor concerned who has kept attendance register under lock and key and does not allow Mrs. I. Nath to work, be taken to task and the presence of Mrs. I. Nath be marked in the attendance register. It is clear that a dispute had arisen between the Municipal Committee in connection with the employment of Mrs. I. Nath. The Government under sub-clause (c) of section 10(1) was of the opinion that an industrial dispute exists between the workmen and the Municipal Committee and accordingly referred the dispute for the adjudication of the Labour Court.

13. I shall next take up the point as to whether the Municipality did not allow the Workman to take up her duty from August, 1964 and if so whether the Workman is entitled to any wages from August, 1964 till the date of her termination of services. There is neither any allegation nor proof that the Municipality has passed any order disallowing the Workman to work at job from August, 1964, onwards. The evidence is that the Workman was working at her post till 20th January, 1965, although during this period she was not regular in her attendance and she absented herself from the duty without taking prior permission. The Workman continuously absented herself from duty from 20th January, 1965 onwards. The Municipal Committee vide its resolution, dated 21st April, 1965, decided that the Workman should not be taken on duty in view of her continued absence from duty from 20th January, 1965. The service of the Workman was terminated on 1st December, 1965.

14. My conclusion is that there was no order of the Municipal Committee prohibiting the Workman from working at her job in August, 1964. The Municipal Committee only on 21st April, 1965, passed a resolution that the Workman should not be taken on duty in view of her continued absence from duty from 20th January, 1965. In my view, the Municipal Committee was not justified in passing the resolution that the Workman should not be taken on duty. If the workman had wilfully absented herself from duty, it was open to the Municipal Committee to take disciplinary action against her but the order not allowing her to return to duty was not justified. The representative of the Municipal Committee pointed out to Rule 8.46 of the Punjab Civil Services Rules, Volume I, and contended that it was within the competence of the Municipal Committee not to permit the Workman to return to her duty. Rule 8.46 reads as:—

“A Government servant returning from leave is not entitled, in the absence of specific orders to that effect, to resume, as a matter of course, the post which he held before going on leave. He must report his return to duty and await orders”.

In my view, Rule 8.46 merely provides that a Government servant returning from leave cannot, as a matter of course, join the post which he held before going on leave and he must report his return to his duty and await orders of posting. This rule, in my view, will have no application in the case in hand.

15. For the reasons stated above, I would find that the resolution of the Municipal Committee, dated 21st April, 1965, prohibiting the Workman from being taken on duty, was not justified and the period from 21st April, 1965 to 1st December, 1965, would be taken as period on duty.

16. As regards the wages payable to the Workman, the representative of the Municipal Committee conceded that the Workman would be entitled to the wages from August, 1964 to the date of her termination of services subject to the leave due to her. In my view, the days for which the Workman was completely absent from duty would be counted as leave. The Workman should be given benefit of leave of all the kind due to her according to the rules upto 1st December, 1965. The representative of the Municipality has filed before me a statement of the recoveries that are due from the Workman.

I direct that the wages for the period 1st of August, 1964 to 30th November, 1965 should be paid to the Workman after deducting the amount that was deductible from her salary according to rules. The Municipal Committee in the statement filed by it has claimed a deduction from the wages on account of house rent. The representative of the Municipal Committee admitted before me that the accommodation given to the Workman was free accommodation. I direct that no amount can be deducted from her wages on account of house rent. I further direct that the recoveries which are said to be due from the Workman should not be deducted out of the wages payable to the Workman.

17. Thus my conclusions are, (a) that the order of termination of service of the Workman was justified and in order, (b) that there is no order of the Municipal Committee not allowing the Workman to work at her duty from August, 1964. The Municipal Committee on 21st April, 1965, had passed a resolution that the Workman should not be taken on duty in view of her continued absence from 20th January, 1965. This resolution, in my view, was not justified, (c) that the order of reference with respect to termination of services of the Workman is valid and with jurisdiction, and (d) the Workman would be entitled to her wages from 1st August, 1964 to 30th November, 1965, subject to the deductions that the permissible under the rules. The amounts that are due from the Workman on account of recoveries will not be deducted out of the wages. Further, the amount claimed on account of house rent also cannot be deducted out of the wages.

I direct that the record of the case along with my award should be sent to the Himachal Pradesh Government forthwith.

*Dated Simla, the
30th November, 1967.*

RAJENDRA NATH,
*Presiding Officer of the Labour Court,
Simla-1.*

P. K. MATTOO,
Secretary.